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No 623

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

vs.

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA as Fiscal for the City of Manila and PEDRO CONCEPCION as Judge of the Court of First Instance of Manila,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the Philippine Islands, and Brief in Support of Petition, With Motion and Notice.

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that where an employee having been advanced wages quit before the end of the term without just cause, he was *prima facie* guilty of intent to defraud.

> "Without imputing any actual motive to oppress we must consider the natural operation of the statute here in question * * *" (p. 244).

In *Quong Wing* v. *Kirkendall*, 223 U. S. 59, the Court considered a Montana statute requiring payment of a license fee by all persons engaged in the laundry business other than the steam laundry business with a proviso that it should not apply to women so engaged where not more than two women were employed. In upholding the classification, however, Mr. Justice Holmes speaking for the Court remarked at p. 63:

> "*Another difficulty suggested by the statute is that it is impossible not to ask whether it is not aimed at the Chinese; which would be a discrimination that the Constitution does not allow. Yick Wo* v. *Hopkins*, 118 U. S. 356. It is a matter of common observation that hand laundry work is a widespread occupation of Chinamen in this country while on the other hand it is so rare to see men of our race engaged in it that many of us would be unable to say that they ever had observed a case. But this ground of objection was not urged and rather was disclaimed when it was mentioned from the Bench at the argument. It may or may not be that if the facts were called to our attention in a proper way the objection would prove to be real. * * * Therefore without prejudice to the question that we have suggested,

when it shall be raised, we must conclude that so far as the present case is concerned the judgment must be affirmed."

Lamar, *J.* dissented on ground that it was a revenue measure and made an arbitrary discrimination.

In the instant case it is clear beyond cavil that the Territorial Act is aimed at the Chinese and therefore "a discrimination that the Constitution and Act of Congress does not allow." It is established beyond peradventure of doubt that the burden of the statute will fall exclusively upon the Chinese.

II.

The Act is void because it denies to petitioners and others similarly situated the rights, privileges and immunities secured to them by the treaties between the United States and China, which secure to Chinese nationals most favored nation treatment.

"The rights of the petitioners as affected by the proceedings of which they complain are not less because they are aliens and subjects of the Emperor of China. *By the article of the treaty between this government and that of China concluded November* 17, 1880, 22 *Stat.* 827, *it is stipulated*: '*If Chinese laborers or Chinese of any other class now either permanently or temporarily residing in the territory of the United States meet with ill treatment at the hands of any other persons the Government of the United States will exert all its power to devise measures for their protection and to secure*

to them the same rights, privileges, immunities and exemptions as are enjoyed by citizens or subjects of the most favored nation and to which they are entitled by treaty."

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application, to all persons within the territorial jurisdiction without regard to any difference of race, color, or nationality; *and the equal protection of the laws means the protection of equal laws*" (Mathew, *J.*, in *Yick Wo* v. *Hopkins, supra*, p. 369).

Article IV of Convention regulating Chinese immigration, concluded March 17, 1894, specifically reaffirms the right of Chinese residents to the enjoyment of "most favored nation treatment." Malloy, Treaties of U. S., Vol. 1, p. 243. The Act of the Philippine Legislature is thus in contravention of the Treaty as well as of the Constitution and Act of Congress.

III.

This Court has jurisdiction to determine the validity of the Act untrammeled by the construction thereof adopted by the Philippine Court. That construction is clearly erroneous. It is completely at variance with the plain import of the language of the Act.

This Court is authorized to review the decision of the Supreme Court of the Philippine Islands, and may entirely disregard the construction placed upon the Act by that Court.

Section 27 of Philippine Autonomy Act confers upon this Court jurisdiction to review final judgments and decrees of the Supreme Court of the Philippine Islands, where the Constitution, or any statute or treaty of the United States is involved or brought in question. (1918 Suppl. Fed. Stat. Anot. p. 605).

The foregoing enactment was modified by Section 7 of an act to amend the Judicial Code, approved Feb. 13, 1925, but only to the extent that Philippine decisions become reviewable by certiorari only, instead of by error and appeal.

Mr. Justice Brandeis, delivering the opinion of the Court in *Philippine Sugar etc. Co.* v. *Philippine Islands,* 247 U. S. 385, 390, declared:

> "This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. *Phoenix Ry Co.* v. *Landis,* 231 U. S. 578. *But that disposition may not be yielded to where the lower court has clearly erred. Carrington* v. *U. S.,* 208 U. S. 1. Here the construction adopted was

> rested upon a clearly erroneous assumption as to an established rule of equity. The Supreme Court erred in refusing to consider the evidence of mutual mistake; and its judgment must be reversed."

In *Yick Wo* v. *Hopkins, supra,* at p. 366, the court declared that it was—

> "constrained at the outset to differ from the Supreme Court of California upon the real meaning of the ordinances in question."

It is submitted that the construction by the Philippine Court is so fanciful and so at variance with the plain import of the language of the Act as to require little comment. "No books of account shall be kept, etc." can scarcely be held to indicate an intent to permit books in any language if certain non-enumerated books are kept in the specified tongues.

Indeed, the majority opinion conceded that if the plain language of the Act meant what it said, then it would probably be unconstitutional.

> *"A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional."*

But in order to save the Act—and the face of the legislature—the court struggled to devise a construction that would bring the Act within the pale. In pursuit of this purpose, the court was able to conjure up an occult constitutional legis-

lative intent, very different from the plain language of the sweeping prohibition set forth in the Act.

> "Act No. 2972 is a fiscal measure. It should be so construed if possible as to effectuate legislative intent as collected from the occasion for the law, the circumstances under which it was enacted, the mischief to be remedied, and the policy which dictated its passage. *It should be so construed if possible as to avoid conflict with the Constitution, although such construction may not be the most obvious or natural one.* Giving, therefore, to the law a meaning which will carry out the main governmental purpose and which will permit us to sanction its constitutionality, it seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in books of account or forms subject to inspection for taxation purposes in any other language than either English, Spanish or a local dialect, although permitting all merchants to execute their commercial transactions or operations in any language or dialect, they may prefer, and although permitting them to keep such other books of account as their personal convenience may dictate and in a language which will come most easily to them * * *."

Thus, in straining after a constitutional construction of a palpably invalid law, the court enacted a new law.

Moreover, the Act as amended by this judicial legislation is still defective. The court in its opinion recognizes that

> "It has not escaped our notice that the law does not specify what books shall be kept."

We search in vain to find in the Act any requirement that account books of any sort be kept. The Act is silent on that point. The inevitable result must be uncertainty and confusion.

How is the unfortunate merchant to know which of his books of account, under the lower court's construction, are to be kept in the designated languages, and which may be in the language of his preference? It would seem that this should be enough to make the law invalid. The decision of the Philippine court is the boldest sort of judicial legislation and is legally unjustifiable, however much we may sympathize with its struggle to avoid the horns of the dilemma by attempting to placate both legislature and victims.

It is interesting to note the attitude of the Philippine Court when confronted by a regulation of the Collector identical in substance with the Act as reconstructed in this case. In *Young* v. *Rafferty*, 33 Phil Reports 556, decided prior to enactment of Act No. 2972 the Supreme Court of the Philippines had before it a regulation of the Collector requiring all merchants to keep a daily sales book in English or Spanish. It was held that in thus prescribing certain languages the Collector had exceeded his authority to make necessary regulations not inconsistent with law, to carry out the Revenue Act. In reaching this conclusion, the Court stated at p. 559:

> "We apprehended that no one will deny that sales could be recorded in a bound volume such as is specified using the tabulated form desired by the Collector, in any modern language. In other words all the information could be recorded in the designated book in

> the required form in Chinese or in a local dialect or in some other language as accurately as it could be recorded in English or Spanish."

Again at p. 560,

> "But however this may be, the figures discussed show that the regulation does affect a large and important class of business men not only Chinese, *but Filipinos as well although it may be that the burden falls most heavily upon the Chinese.* To require this number of business men to engage someone familiar with English or Spanish to keep a record for them which will comply with the regulation would in many instances impose a greater burden upon them than the entire amount of taxes which they have to pay."

It is significant that Filipinos as well as Chinese were affected by the disputed regulation. Moreover the Philippine Supreme Court then saw no grave necessity for such an invasion of personal liberty, nor did the Court hesitate to recognize the injustice of imposing such requirements upon the Chinese merchants.

No construction can conceal the fact that this is a blow aimed to drive out the Chinese merchant. That purpose cannot be effected in that fashion in the teeth of the Constitution, the Act of Congress and the Treaty. The local Act is hence invalid and must yield.

CONCLUSION.

The decree of the lower Court should be reversed and a writ of prohibition directed to issue against respondents restraining them and each of them from enforcement of Act No. 2972, with such other and further relief as may seem just and proper.

Respectfully submitted,

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